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No. 95-1042

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BARBARA KRAEBEL Doing business As
BARKLEE REALTY COMPANY,

Petitioner,

- against -

THE NEW YORK CITY DEPARTMENT OF FINANCE,

Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT**

PAUL A. CROTTY,
Corporation Counsel of
the City of New York
Attorney for Respondent
100 Church Street
New York, New York 10007
(212) 788-1024 or 0429

ELIZABETH DVORKIN,*
PHILIP AZARIAN,
of Counsel

January 24, 1996
*Attorney of Record

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## COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Whether the Courts of the State of New York will entertain constitutional and due process challenges to real property tax assessment practices.

2. Whether Petitioner's federal civil rights claims regarding state tax assessment methods are immune to preclusive effect given by New York State courts.

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**RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT**

## STATEMENT OF FACTS

Petitioner is the owner of a 16 unit residential apartment building located in Borough of Manhattan in the City of New York. Petitioner's property currently enjoys a partial real property tax exemption granted to petitioner

under a City program known as the "J-51" program, a program to encourage the rehabilitation and improvement of the City's housing stock by granting partial real property tax exemptions based on improvement costs.

In June, 1993 petitioner commenced a proceeding pursuant to Article 78 of the New York Civil Practice Laws and Rules ("CPLR"), and under 42 U.S.C. §1983, alleging, inter alia, that: 1) her property's 1993/94 tax assessment was excessive, and that the amount of her "J-51" exemption was understated; 2) New York City Department of Finance ("Finance") violated her constitutional rights to due process and equal protection of the law by failing to adopt "uniform standards of assessment"; and 3) Real Property Tax Law ("RPTL") §305 violated both state and federal constitutions.

The Respondent City Department of Finance moved to dismiss the proceeding on two grounds. First,

petitioner's assessment claims could only be raised in a proceeding brought pursuant to RPTL Article 7, the exclusive statutory remedy for challenges to real property tax assessments; and second, petitioner's constitutional claims concerning RPTL §305 and Finance's assessment procedures were barred by res judicata and collateral estoppel since those claims were fully litigated by the Petitioner in 1987 in a prior proceeding.

The trial court granted the motion on both grounds and the New York State Supreme Court, Appellate Division, First Department, unanimously affirmed. ___A.D.2d___, 629 N.Y.S.2d 42 (1st Dept. 1995) (Petitioner's Appendix A). Petitioner sought an appeal as of right to the New York State Court of Appeals, but the the appeal was dismissed by that court sua sponte. ___N.Y.2d___, 634 N.Y.S.2d 438, 658 N.E.2d 216 (1995) (Petitioner's Appendix B).

Petitioner's constitutional claims in the present proceeding were identical to those previously raised and decided in the 1987 proceeding. In the 1987 proceeding, the trial court dismissed petitioner's constitutional claims for lack of standing (Petitioner's Appendix E). Later, in a subsequent decision, the trial court revisited petitioner's constitutional claims and denied them on the merits (Petitioner's Appendix F p. 20a-23a). The Appellate Division, First Department affirmed the Supreme Court judgment and the Court of Appeals denied petitioner leave to appeal. Barklee Realty Company v. New York City Dept. of Finance, 147 A.D.2d 990, 537 N.Y.S.2d 942 (1st Dept. 1989), leave to appeal denied, 75 N.Y.2d 702, 551 N.E.2d 601 (1990).



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## REASONS FOR DENYING THE WRIT

### POINT I

### INDIVIDUAL TAXPAYERS CAN CHALLENGE THE LEGALITY OR CONSTITUTIONALITY OF REAL PROPERTY TAX ASSESSMENT PRACTICES IN STATE COURT.

Petitioner's assertion that the decision of the Appellate Division precludes taxpayers from challenging the legality or constitutionality of real property assessment methods is patently incorrect. New York courts will entertain challenges to the legality or constitutionality of state assessment practices by taxpayers when properly presented in a declaratory judgment action, or in a proceeding pursuant to CPLR Article 78. See Dudley v. Kerwick 52 NY2d 542, 547-552, 439 N.Y.S.2d 305, 421 N.E.2d 797 (1981) (CPLR Article 78 challenge by taxpayers against town assessor's practice of granting full tax exemptions to all property owners affiliated with a



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religious organization); Matter of Chaslow v. Board of Assessors, 202 A.D.2d 499, 609 N.Y.S.2d 27 (2d Dept. 1994), appeal denied, 83 N.Y.2d 759, 616 N.Y.S.2d 14, 639 N.E.2d 754 (1994) (CPLR Article 78 proceeding challenging counties' method of assessing residential properties as illegal and unconstitutional); Board of Managers of Acorn Ponds at North Hills Condominium No. 3 v. Board of Assessors, 197 A.D.2d 620, 603 N.Y.S. 2d 491 (2d Dept. 1993), appeal denied, 83 N.Y.2d 759, 616 N.Y.S.2d 14, 639 N.E.2d 754 (1994) (the appropriate vehicle for asserting claim that assessors' method of reassessment was unconstitutional is a CPLR Article 78 proceeding); Matter of Mundinger v. Assessor of Rye, 187 A.D.2d 594, 595, 590 N.Y.S.2d 122 (2d Dept. 1992) (successful challenge to the practice of "selective reassessment" of waterfront property as violative of equal protection); Nash v. Assessor, Town of Southampton, 168

A.D.2d 102, 104-108, 571 N.Y.S.2d 122 (2d Dept. 1991) (constitutional challenge to town's reassessment program on equal protection grounds); Krugman v. Board of Assessors, Village of Atlantic Breach, 141 A.D.2d 175, 179-184, 533 N.Y.S.2d 495 (2d Dept. 1988) (challenge to assessment methods on constitutional grounds converted to a CPLR Article 78 proceeding).

To properly assert such claims in a declaratory judgment action or CPLR Article 78 proceeding, the taxpayer must be challenging the methods as applied to several properties. Board of Managers of Greens of North America v. Board of Assessors, County of Nassau, 202 A.D.2d 417, 419, 608 N.Y.S.2d 694 (2d Dept. 1994), appeal denied, 83 N.Y.2d 757, 615 N.Y.S.2d 874, 639 N.E.2d 415 (1994). But where the challenge concerns the overvaluation of the taxpayer's individual property, the taxpayer must instead seek relief via a proceeding pursuant

to RPTL Article 7, the exclusive statutory remedy for challenging individual tax assessments. Id.; Dudley v. Kerwick, supra; Estate of Herbert Rogowsky v. Board of Assessment, Village of Port Chester, 191 A.D.2d 697, 698, 595 N.Y.S.2d 530 (2d Dept. 1993).

Petitioner's CPLR Article 78 proceeding, while purporting to challenge the assessment methods of the City Department of Finance on constitutional grounds, really concerned the overvaluation of her specific property. Accordingly, petitioner's exclusive remedy was by way of an RPTL Article 7 proceeding.

An RPTL Article 7 proceeding provides a complete and expeditious remedy to taxpayers who wish to challenge an illegal or excessive assessment. See Dudley v. Kerwick, supra, at 548-550. The availability of this remedy would therefore satisfy due process and equal protection of the law. See Long Island Lighting Co. v. Town of

Brookhaven, 889 F.2d 428 (2nd Cir. 1989) (RPTL Article 7 provides a plain, speedy and efficient remedy for purposes of the Tax Injunction Act).

## POINT II

### PETITIONER'S FEDERAL CIVIL RIGHTS CLAIMS REGARDING THE CITY'S ASSESSMENT METHODS ARE NOT IMMUNE TO THE APPLICATION OF COLLATERAL ESTOPPEL AND RES JUDICATA BY NEW YORK STATE COURTS.

Petitioner's §1983 claims were previously raised in the 1987 proceeding and were barred in the 1993 proceeding by res judicata and collateral estoppel. A state's application of res judicata and collateral estoppel with respect to §1983 claims will be given full force and effect by the federal courts. Migra v. Warren City School District Board of Education, 465 U.S. 75, 76, 81-88 (1984); Allen v. McCurry, 449 U.S. 90, 97-99 (1980). Petitioner's claims were litigated and re-litigated in the 1987

proceeding and were dismissed on the merits. Accordingly, the fact that petitioner raised claims purporting to sound under 42 U.S.C. §1983 does not render those claims immune to preclusion in the 1993 proceeding.

## CONCLUSION

**THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED**

January 24, 1996

Respectfully submitted,

PAUL A. CROTTY
Corporation Counsel of
the City of New York
Attorney for Respondent
New York City Department
of Finance

ELIZABETH DVORKIN,*
PHILIP AZARIAN,
of Counsel

*Attorney of Record